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No. 419

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1958.

CLARENCE E. HODGES, - - - - - Petitioner,

versus

JOE F. HODGES, Successor to Carl E. Jordan, Sheriff, Et Al., - - - - - - Respondent.

AND

JAMES B. SEARCY, - - - - - - Petitioner,

versus

JOE F. HODGES, Successor to Carl E. Jordan, Sheriff, Et Al., - - - - - - Respondent.

BRIEF FOR RESPONDENTS ON PETITION FOR WRIT OF CERTIORARI.

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Copies of this brief have been served by mailing copies to Cleon K. Calvert, Pineville, Ky., and Leland H. Logan, Bowling Green, Ky., Attorneys for Petitioners.

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(a) Federal statute conferring appellate jurisdiction on the Supreme Court over decisions of state courts determines the questions which may be reviewed by the Supreme Court.

28 U.S.C.A. Section 1257 (3).

(b) There is no federal constitutional right to buy, sell or traffic in alcoholic beverages.

Samuels v. McCurdy, 267 U. S. 188, 69 L. Ed. 568.

(c) The due process clause of the Fourteenth Amendment does not control methods of state procedure or give jurisdiction to this court to review alleged errors of law alleged to have been committed by a state court in the performance of its duties concerning questions non-federal in character.

McDonald v. Oregon, etc., Nav. Co., 233 U. S. 665, 58 L. Ed. 1145.

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BRIEF FOR RESPONDENTS ON PETITION FOR WRIT OF CERTIORARI.

These actions were instituted in the lower court by petitioners as contests of local option elections held in the territory embraced within the corporate limits of Bowling Green, Kentucky, and within that portion of Warren County, Kentucky, situated outside the corporate limits of the city. Under the statute relating to local option elections the territory within the city and the remaining portions of the county outside the city are made separate local option districts. KRS 242.125.

The contests were instituted under statutory authority conferred by KRS 242.120 which provides that the procedure in contests of local option elections shall conform to the procedure provided for contests of general elections by candidates for state, district, county or city offices. KRS 122.070 to 122.090 inclusive.

The trial court dismissed the contests because the contestants had failed to state any valid ground of contest. The trial court also refused to permit the filing of amended complaints stating new grounds of contests because the amendments were tendered after the expiration of the statutory period for instituting contests. KRS 122.070 specifically provides that contestants' petition "shall be filed and process issued within thirty days after the day of the election; it shall state the grounds of the contest relied on, and no other grounds shall afterward be relied upon."

The judgment of the trial court was affirmed by the Court of Appeals of Kentucky and the mandate of that court was issued after a petition for rehearing was overruled. 314 S. W. 2d 208.

We shall not burden the court with an argument directed to the question of whether or not the case was correctly decided by the lower court and the Court of Appeals. That question is exclusively one involving an interpretation of state law and it has been finally settled by the highest court of the state.

NO FEDERAL QUESTION IS PRESENTED.

It is elementary that the federal statute conferring appellate jurisdiction on the Supreme Court over decisions of state courts determines the question which may be reviewed by the Supreme Court.

28 U.S.C.A. Section 1257 (3) limits review by writ of certiorari to the following questions:

(1) Where the validity of a treaty or statute of the United States is drawn in question;

(2) Where a state statute is drawn in question on the ground of its being repugnant to the constitution, treaties or laws of the United States;

(3) Where any title, right, privilege or immunity is specially set up or claimed under the constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

In this case petitioners invoke the time worn plaint of losing litigants who desire to prolong litigation in insisting that they have been deprived of property without due process of law and denied equal protection of law. Such a claim is not only frivolous, it is absurd.

Of what right or privilege guaranteed to them by the federal constitution have they been deprived?

The right to control, limit or prohibit the sale of alcoholic beverages within their boundaries or within local option districts established by law, has always been recognized as resting within the power of the several states.

There is no constitutional right to buy, sell or possess alcoholic beverages intended for sale. Samuels v. McCurdy, 267 U. S. 188, 69 L. Ed. 568.

The right to contest these elections and the procedure by which they are determined is conferred and controlled by legislative enactments of this state. It is elementary and needs no citation of authority to show that the due process clause of the Fourteenth Amendment does not control methods of state procedure or give jurisdiction to this court to review mere errors of law alleged to have been committed by a state court in the performance of its duties within the scope of its authority concerning matters non-federal in character. McDonald v. Oregon, etc., Nav. Co., 233 U. S. 665, 58 L. Ed. 1145.

It is respectfully submitted that the parties for writ of certiorari should be denied.

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